

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

Implementation of Section 273 of the) CC Docket No. 96-254
Communications Act of 1934, as amended)
by the Telecommunications Act of 1996)

REPLY COMMENTS OF U S WEST, INC.

John L. Traylor
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2798

Attorney for

U S WEST, INC.

Of Counsel,
Dan L. Poole

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SUMMARY

U S WEST, Inc. ("U S WEST") submits its Reply Comments regarding implementation of Section 273 of the Act. U S WEST supports the Commission's goal to preserve the incentives offered by Congress in Section 273 for the BOCs to develop innovative products, solutions, and technologies.

Congress authorized the BOCs to engage in close collaboration with any manufacturer, including BOC-affiliated manufacturers, during the design and development phases of telecommunications equipment or CPE. This authority includes participation in product-specific design and development work. Congress authorized the BOCs to enter into any form of royalty agreement with manufacturers of telecommunications equipment. Congress authorized the BOCs to engage in research involving all aspects of manufacturing. Rules which attempt to restrict or restrain these authorized activities would be inconsistent with the clearly-articulated intent of Congress.

The Commission's current disclosure rules will satisfy the BOCs' disclosure requirements in Section 273(c) of the Act. Additional disclosure rules are not required.

The nondiscrimination and procurement standards in Section 273(e) of the Act apply only to a BOC's procurement of telecommunications equipment, and software and services integral to that equipment, and apply only to a BOC who is permitted to engage in manufacturing under Section 273(a) through a separate affiliate. In addition to these standards, the BOCs currently utilize rigorous and

widely-known procurement policies and practices for the procurement of telecommunications equipment. No additional procurement rules or requirements are needed.

The Commission should exercise caution about adopting rules regarding standards setting and certification under Section 273(d). The current formal and informal processes used in the industry accommodate a broad diversity of interests. The Commission should be guarded about adopting rules in this area which may slow the implementation of technical innovation in the provision of telecommunications equipment, CPE, and network services.

Finally, Section 273(d) describes in plain and straightforward language the circumstances under which Bellcore would be permitted to engage in manufacturing telecommunications equipment and CPE. Additional rules and additional investigatory proceedings are not required to determine when that occurs.

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} CC Docket No. 96-254

REPLY COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") submits these Reply Comments in response to the Notice of Proposed Rulemaking¹ in connection with implementation of the requirements of Section 273 of the Telecommunications Act of 1996 ("1996 Act" or "Act").

I. SECTION 273(b) AUTHORIZES A BELL OPERATING COMPANY (BOC) TO ENGAGE IN CLOSE COLLABORATION, RESEARCH, AND TO ENTER INTO ROYALTY AGREEMENTS UPON ENACTMENT.

A. Section 273(b)(1) Authorizes A BOC To Engage In Close Collaboration During The Design And Development Phases With Any Manufacturer.

(1) Collaboration May Involve Product-Specific Design And Development With A Manufacturer.

Under the AT&T Consent Decree,² Section II(D)(2) prohibited the BOCs from engaging in the manufacture of telecommunications equipment and customer

¹ In the Matter of Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, CC Docket No. 96-254, Notice of Proposed Rulemaking, FCC 96-472, rel. Dec. 11, 1996 ("Notice").

² United States v. American Tel. And Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) ("AT&T Consent Decree").

premises equipment ("CPE"). However, the Decree did not define "manufacturing." Therefore, that responsibility fell to the United States District Court for the District of Columbia who retained jurisdiction to oversee implementation of the Decree. The Court defined manufacturing broadly to cover the "design, development and fabrication" of telecommunications equipment, CPE and the "software integral to equipment hardware, also known as firmware."² However, the Court also acknowledged that the BOCs were permitted to engage in some aspects of design and development, notwithstanding the manufacturing prohibition. For example, the Court said:

The design, maintenance, and operation of the exchange networks constitutes the principal business of the Regional Companies under the decree, and it would be specious to argue that they are prohibited from engaging in this essential facet of that business.

But the performance of such work is a far cry from the design of specific products – a process that takes place after generic specification for the network have been determined and disseminated. It is at that point that an equipment manufacturer designs the telecommunications or CPE products as well as the detailed plans on how to build such products or systems. That design function is an integral part of "manufacturing," and as such it is prohibited to the Regional Companies under section II(D)(2).³

Based upon this analysis, the Court made a distinction between BOC development of generic functional specifications, which the Court said was not

or "Decree"). The AT&T Consent Decree resulting from this litigation was subsequently terminated. See Order, Civil Action No. 82-0192 (D.D.C. Apr. 11, 1996).

² U.S. v. Western Elec. Co., 675 F. Supp. 655, 662, 667 n.54 (D.D.C. 1987).

³ *Id.* at 667-68.

manufacturing, and BOC product-specific design, which the Court said was manufacturing.

When it drafted Section 273(b)(1), Congress could have recognized this distinction under the AT&T Consent Decree, could have carried it forward into the Act, and could have authorized the BOCs to engage only in development of generic functional specifications with a manufacturer. The Telecommunications Industry Association ("TIA") contends that this distinction must be read into Section 273(b)(1).¹ It argues that Section 273(b)(1) continues to prohibit the BOCs from engaging in any product-specific design or development work with a manufacturer.²

The language used by Congress in Section 273(b)(1) is plain and unambiguous:

A Bell operating company [may engage] in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.³

The contention that a BOC may not participate with a manufacturer in product design is not supported by this plain language in the Act.

U S WEST agrees with SBC Communications Inc. ("SBC") and BellSouth Corporation ("BellSouth")⁴ that Section 273(b)(1) represents a broad authorization by Congress to engage in all aspects of product design and development with a

¹ Comments of TIA, filed Feb. 24, 1997 at 12-14.

² *Id.* at 15-16.

³ 47 U.S.C. § 273(b)(1).

manufacturer "except for the processing and fabrication of the hardware and software to a finished product."

(2) A BOC May Engage In Close Collaboration With Any Manufacturer.

In the Notice, the Commission tentatively concludes that Section 273(b)(1) does not permit close collaboration: "(1) between a BOC or an [Regional Holding Company] RHC and the manufacturing affiliate of another unaffiliated BOC or RHC; or (2) between the manufacturing affiliates of two unaffiliated BOCs or RHCs."¹³ However, the plain language of Section 273(b)(1) permits close collaboration "with any manufacturer" of customer premises equipment or telecommunications equipment during the design and development phases.¹⁴

U S WEST agrees with Bell Atlantic/NYNEX, BellSouth, SBC, and Ameritech who say that Section 273(b)(1) authorizes a BOC to engage in close collaboration with "any manufacturer" of telecommunications equipment or CPE and that the Commission's tentative conclusion is incorrect, based upon the language used in the Act.¹⁵ "[A] BOC may work with any selected supplier -- including a nonaffiliated BOC or its affiliate -- in the design and development of

¹³ Comments of BellSouth, filed Feb. 24, 1997 at 4; Comments of SBC, filed Feb. 24, 1997 at 4.

¹⁴ SBC at 4.

¹⁵ Notice ¶ 11.

¹⁶ 47 U.S.C. § 273(b)(1) (emphasis added).

¹⁷ Comments of Bell Atlantic Telephone Companies and NYNEX Telephone Companies, filed Feb. 24, 1997 at 6 ("Bell Atlantic/NYNEX"); BellSouth at 2-3; SBC at 2; Comments of Ameritech, filed Feb. 24, 1997 at 11.

network equipment or CPE.”¹¹ “273(b)(1) confirms that ‘[s]ubsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer.’ ‘Any’ manufacturer certainly includes unaffiliated BOCs, [Regional Bell Operating Company] RBOCs, and their affiliates.”¹² “The term ‘any manufacturer’ includes both BOC-affiliated and non-BOC affiliated manufacturers. . . . The 1996 Act could not be more clear: BOCs may collaborate with the entire universe of manufacturers.”¹³

The language of Section 273(b)(1) also permits more than one BOC to engage in close collaboration with a single manufacturer during the design and development phases. The manufacturer may be a BOC or a non-BOC affiliate. Congress did not restrict the manufacturing entities with whom a BOC could engage in close collaboration and, by using the phrase “close collaboration” without defining it, Congress intended not to restrict or constrain the form of the joint collaborative endeavor between a BOC and a manufacturer during the design and development phases.

(3) A BOC May Engage In Close Collaboration Without Creating A Separate Affiliate Under Section 272 Of The Act

Section 273(b)(1) says that a BOC does not engage in prohibited manufacturing when it engages in close collaboration with any manufacturer during the design and development phases. Section 273(a) provides that a BOC is

¹¹ Bell Atlantic/NYNEX at 7.

¹² BellSouth at 3 (footnote omitted).

¹³ SBC at 3. See also Ameritech at 11.

permitted to engage in manufacturing, including fabrication, only when it is authorized to provide interLATA services in any one of its in-region states. Until then, and because it is not engaged in prohibited manufacturing when it engages in close collaboration with any manufacturer, the Act does not require a BOC to comply with the structural separation requirements under Section 272(a)(2)(A) of the Act for a separate affiliate engaged in manufacturing.

Even though it concedes that at least some of the activities undertaken by a BOC in close collaboration with a manufacturer do not constitute manufacturing, TIA nevertheless contends that "all activities undertaken by a BOC pursuant to Section 273(b)(1) must be conducted in a manner consistent with the structural separation requirements and non-discrimination safeguards established in Sections 272 and 273."⁶ This is an erroneous conclusion. The Act does not require a BOC to create a separate affiliate under Section 272 for purposes of engaging in close collaboration with a manufacturer.

B. A BOC Is Permitted To Enter Into Any Form Of Royalty Arrangement With Any Manufacturer Of Telecommunications Equipment.

Under the AT&T Consent Decree, some royalty arrangements between a BOC and a manufacturer were regarded as prohibited manufacturing of telecommunications equipment or CPE and some were not.⁷ For example, those arrangements under which a BOC was entitled to receive a royalty payment based

⁶ TIA at 13-14.

⁷ U.S. v. Western Elec. Co., Inc., 12 F.3d 225 (D.C. Cir. 1993).

upon the sale of the product were regarded as revenue sharing with the manufacturer and, therefore, prohibited to a BOC.¹⁸

Where the form and quality of the royalty arrangement was important under the AT&T Consent Decree, because it would determine whether a BOC was engaged in a permitted activity or whether it was engaged in prohibited manufacturing of telecommunications equipment or CPE, Congress ignored all of those former distinctions when it drafted Section 273(b)(2)(B) of the Act. Section 273(b)(2)(B) means that a BOC may enter into "royalty agreements" with any manufacturer of telecommunications equipment. Congress could have carried forward the conditions and limitations on various royalty arrangements from the AT&T Consent Decree interpretive case law. It chose not to do so.

U S WEST disagrees with TIA's suggestion that royalty payments may be received by a BOC only for the license of property rights which are the result of "permissible" "generic" "BOC research activities."¹⁹ U S WEST also disagrees with TIA's suggestion that a BOC may not receive royalty payments for any intellectual property right licensed to the manufacturer, if the BOC purchases the telecommunications equipment or CPE which utilizes that intellectual property right.²⁰ Under Section 273(b)(2)(B), royalty arrangements may include any form of payment made to a BOC in connection with the use by a manufacturer of any form

¹⁸ Id. at 228.

¹⁹ TIA at 16.

²⁰ Id.

of intellectual property right licensed by a BOC,"¹¹ without regard to the BOC's purchases of telecommunications equipment.

U S WEST agrees with SBC that "Section 273(b)(2) broadly permits any royalty agreement and does not distinguish between royalties paid on the front end of the BOC's arrangement with the manufacturer or a running royalty tied to a percentage of receipts or per unit produced."¹²

Consistent with the Commission's desire to "preserve BOC incentives to research and develop innovative products, solutions and technologies,"¹³ the Commission should not adopt rules which limit or constrain the form of royalty arrangements between a BOC and any manufacturer of telecommunications equipment. The language used by Congress in Section 273(b)(2)(B) would not support any such limitations.

C. A BOC Is Permitted To Engage In Research Related To All Aspects Of Manufacturing.

Section 273(b)(2)(A) permits a BOC to engage "in research activities related to manufacturing" upon enactment. The scope of permitted research is not limited. It may include research about generic requirements and specifications as well as research about specific product design and development. Moreover, even though a BOC cannot engage in the actual fabrication of telecommunications equipment or CPE until it obtains authorization to provide interLATA services in one of its in-

¹¹ Bell Atlantic/NYNEX at 7.

¹² SBC at 7. See also Comments of Ad Hoc Coalition of Telecommunications Manufacturing Companies, filed Feb. 24, 1997 at 2-6 ("Ad Hoc").

¹³ Notice ¶ 12.

region states, the language used in Section 273(b) also clearly permits the BOC to engage in research about all aspects of fabrication.

U S WEST disagrees with TIA's suggestion that Section 273(b)(2)(A) only permits a BOC to engage in "basic and applied research of a 'generic' nature."^{**} This suggestion is based upon the erroneous notion that some of the AT&T Consent Decree case law was carried forward by Congress into the Act. However, the plain language used in Section 273(b)(2) answers that -- it permits a BOC to engage in any research.

U S WEST also disagrees with TIA's suggestion that "any product-specific [Research and Development] R&D must be undertaken only through the BOC's separate affiliate."^{***} This suggestion is equally erroneous. Section 273(b) provides that "research activities related to manufacturing" are not prohibited.^{****} Under Section 272(a)(2)(A), the Act does not require a BOC to create a separate affiliate to engage in manufacturing until the BOC is authorized to provide interLATA services in one of its in-region states nor until the BOC actually begins to engage in previously-prohibited manufacturing of telecommunications equipment or CPE. The Act does not require a BOC to engage in research through a separate affiliate.

^{**} TIA at 15.

^{***} Id.

^{****} 47 U.S.C. § 273(b)(2)(A).

II. THE COMMISSION'S EXISTING RULES, WHICH ADDRESS PUBLIC NOTICE OF NETWORK CHANGES AND DISCLOSURE OF NETWORK INFORMATION, SATISFY THE INFORMATION DISCLOSURE REQUIREMENTS OF SECTION 273(c).

Section 273(c)(1) requires a BOC to maintain and file with the Commission information with respect to the protocols and technical requirements "for connection with and use of its telephone exchange service facilities." Section 273(c)(1) also requires a BOC to report promptly to the Commission any material changes or planned changes to such protocols and requirements.

A. The Commission's Existing Disclosure Rules Satisfy These Disclosure Requirements.

The BOCs are currently subject to broad network information disclosure rules including the recently-promulgated Commission rules for network disclosure for interconnecting carriers. The Commission's Computer II proceeding⁷ and Computer III proceeding,⁸ as well as the recently-adopted network disclosure

⁷ In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations, Notice of Inquiry and Proposed Rulemaking, 61 FCC 2d 103 (1976), Tentative Decision and Further Notice of Inquiry and Rulemaking, 72 FCC 2d 358 (1979), Final Decision, 77 FCC 2d 384 (1980), Memorandum Opinion and Order, 84 FCC 2d 50 (1980), Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512 (1981).

⁸ In the Matter of Amendment of Sections 64.702 of the Commission's Rules and Regulations, Report and Order, 104 FCC 2d 968 (1986), on recon., 2 FCC Rcd. 3035 (1987), on further recon., 3 FCC Rcd. 1135 (1988), second further recon., 4 FCC Rcd. 3827 (1989), Computer III Remand, 5 FCC Rcd. 7719 (1990), on recon., 7 FCC Rcd. 909 (1992), pet. for review denied sub nom., California v. FCC, 4 F.3d 1506 (9th Cir. 1993), BOC Safeguards Order, 6 FCC Rcd. 7571 (1991), vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994), cert. denied, 115 S.Ct. 1427 (1995).

requirements in the Second Report & Order¹ for interconnecting carriers, collectively represent a comprehensive compendium of BOC disclosure duties which address the network information needs of equipment manufacturers, among others.

U S WEST agrees with the Pacific Telesis Group: "If a BOC discloses network information to 'other carriers, ISPs, ESP's and other members of the public,' it has effectively disclosed this information to the world."² The Commission's existing disclosure rules satisfy the disclosure requirements in Section 273(c).³

B. Disclosure Rules Designed Solely For Manufacturers Are Not Required.

The Commission need not develop a whole new set of disclosure rules pertaining solely to manufacturers to ensure that they receive needed information.

In spite of the adequacy of the existing disclosure rules imposed upon the BOCs, the Information Technology Industry Council ("ITI") and TIA suggest that the Commission should adopt additional rules, solely for the benefit of equipment manufacturers and vendors.⁴

Section 271(c)(1) requires disclosure of information with respect to the protocols and technical requirements "for connection with and use of" a BOC's

¹ In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al., CC Docket No. 96-98, et al., Second Report and Order and Memorandum Opinion and Order, FCC 96-332, ¶¶ 183-235, rel. Aug. 8, 1996 ("Second Report & Order"), appeals pending sub nom., 96-3519, et al. (8th Cir.)

² Comments of Pacific Telesis Group, filed Feb. 24, 1997 at 13 ("PacTel"). See also, BellSouth at 16-18; Bell Atlantic/NYNE at 9-10; Ameritech at 19.

³ 47 C.F.R. §§ 51.325 - 51.335.

⁴ Comments of ITI, filed Feb. 24, 1997 at 10-12; TIA at 18-25.

telephone exchange service facilities. In addition to this disclosure, TIA asks for more. It asks for BOC disclosure of information relating to "1) connections between BOC network elements, and 2) connections between customer premises equipment and BOC network elements."²⁵ TIA asks for more than Congress intended. The Act requires a BOC to disclose new or substantial modifications to network interfaces to inform interexchange carriers, competitive local exchange carriers (or "LEC"), and manufacturers that impact their ability to interface or interconnect with the BOC's network. They do not need to know what occurs within the BOC's network to be able to interconnect or interface with the network.

ITI suggests that "manufacturers should have the opportunity to seek additional information where they believe a BOC's initial disclosure is incomplete or otherwise inadequate."²⁶ However, this suggestion is unreasonable and impractical, because it does not represent an objective standard against which disclosure can be tested. ITI's standard would permit a single manufacturer to make a subjective determination as to whether it believes the BOC's disclosure "is incomplete or otherwise inadequate." Adopting such a standard would undermine the goal of the network disclosure requirements in the Commission's rules and in the Act, i.e., uniformity in the manner and time of disclosure for the benefit of all. ITI's suggestion would allow one manufacturer to attempt to obtain additional information which is not otherwise available to other manufacturers on the same basis.

²⁵ TIA at 25.

U S WEST also objects to ITI's suggestion that the Commission should adopt additional rules to permit a manufacturer to file a complaint with the Commission and to enjoin a BOC's implementation of network changes or commercial introduction of equipment, for at least sixty days, if the manufacturer believes a BOC's network disclosure is not timely or is incomplete or inadequate in some respect.⁹ This proposed rule, like the previously discussed ITI proposed rule, is defective, because it is based upon a subjective standard from the perspective of a single manufacturer. The Commission's existing rules provide manufacturers with fair and reasonable procedures to air their complaints and to resolve their disputes with a BOC about network disclosure.

C. Section 273(c) Disclosure Should Occur At The Make/Buy Point.

Only once a BOC has made a firm decision to deploy a technical change (the "make/buy" point) is disclosure appropriate and necessary. The make/buy point was originally adopted as the point of disclosure in the Computer III inquiry to protect the industry from premature BOC announcements that could impede carrier development efforts and inhibit network innovation. The Commission concluded that, for purposes of network disclosure under Section 251(c)(5), the make/buy point is the point at which a BOC's "plans are sufficiently developed to provide adequate

⁹ ITI at 9.

¹⁰ Id. at 13.

and useful guidance to competing service providers."⁷ The make/buy point should also be the trigger for purposes of Section 273(c) disclosure.⁸

Close collaboration between a BOC and a manufacturer should not be the trigger, as the Commission suggests⁹ and as ITI suggests.¹⁰ U S WEST agrees with Bell Atlantic/NYNEX, SBC, and Bell Communications Research, Inc. ("Bellcore") that technical trials should not be the trigger.¹¹

In the case of close collaboration as well as in the conduct of technical trials, the BOC has not made a decision to deploy the technology or equipment which is the subject of collaboration or testing. The Commission's fear that the BOC would have a competitive advantage if disclosure were not required at these earlier stages is imagined.¹² Rather, early disclosure at these stages could be used by a BOC to disadvantage manufacturers.

Disclosure of information at the collaboration stage or at the technical trial stage could be competitively harmful to manufacturers who act upon the disclosed information and who make substantial expenditures and investments in planning and gearing up for supposed use of the new technology, only to learn later that the BOC does not intend to deploy the technology.

⁷ See Second Report & Order ¶ 223.

⁸ Bell Atlantic/NYNEX at 11-12; PacTel at 13; BellSouth at 17.

⁹ Notice ¶ 27.

¹⁰ ITI at 7.

¹¹ Bell Atlantic/NYNEX at 13; SBC at 9; Comments of Bellcore, filed Feb. 24, 1997 at 22.

¹² Notice ¶ 27.

The make/buy point is an objective point upon which both the BOC and manufacturers can reasonably and fairly rely.

D. The Commission Should Permit The Use Of The Internet, Rather than Individually-Addressed Notices To Manufacturers, For The Expedited Notice Procedures Under Section 273(c).

Section 51.333 of the Commission's rules requires that in cases of changes which can be implemented within six months of the make/buy point, in addition to providing notice of a change to the Commission, an incumbent LEC is also required to certify that it has provided individual paper copies of the public notice to all providers interconnecting with the LEC's network.^{**}

The number of interconnecting service providers for purposes of this notice requirement is a difficult endeavor as the number of interconnectors increases and as mailing lists continue to change. However, the number of manufacturers to whom the BOC would be required to give individual notice under this procedure would be administratively unmanageable.

For this reason, U S WEST recommends that the Commission modify the notification requirement for short-term notice of change and permit the notice to be placed on the Internet five days in advance of the short-term notice filing with the Commission. Providing such notice via the Internet gives all interested parties (e.g., manufacturers, interconnectors, or enhanced service providers) instantaneous and equal access to the necessary technical information.

^{**} 47 C.F.R. § 51.333.

III. THE NONDISCRIMINATION AND PROCUREMENT STANDARDS IN SECTION 273(e) APPLY ONLY TO THE PROCUREMENT OF TELECOMMUNICATIONS EQUIPMENT AND ONLY WHEN A BOC IS ENGAGED IN PERMITTED MANUFACTURING THROUGH AN AFFILIATE OR A RELATED PERSON.

In the Notice, the Commission asks whether the nondiscrimination and procurement standards in Section 273(e) apply now to all BOCs or whether they apply only to BOCs who obtain interLATA authorization and who engage in manufacturing.⁶³

TIA contends that "the requirements of Section 273(e) should be deemed applicable to all BOCs."⁶⁴ ITI argues that the requirements of Section 273(e) "apply to all BOCs, whether or not they engage in manufacturing."⁶⁵ U S WEST disagrees.

On the other hand, Northern Telecom Inc. ("Nortel") observes: "The public policy rationale for the . . . [nondiscrimination and procurement standards] . . . is that Congress wanted to prohibit the BOC, as a large purchaser and consumer of equipment, from favoring *its own manufacturing operation*."⁶⁶ U S WEST agrees with SBC, Nortel, and BellSouth who say that "Section 273(e) should be interpreted as only applying to BOCs that are authorized to manufacture under Section 273(a)."⁶⁷

In the Notice, the Commission asks whether the procurement standards in Section 273(e)(2) apply only to telecommunications equipment and CPE or to all

⁶³ Notice ¶ 63.

⁶⁴ TIA at 46 (emphasis added).

⁶⁵ ITI at 15.

⁶⁶ Comments of Nortel, filed Feb. 24, 1997 at 15.

equipment, and whether they apply only to the procurement of services and software integral to such telecommunications equipment and CPE or whether they apply to the procurement of all services and all software.^{**} The Commission observes that Section 273(c) is positioned within that section of the Act which addresses BOC manufacturing of telecommunications equipment and CPE.^{**}

TIA argues: “[T]he Commission should adopt an inclusive construction of this term [‘equipment’], as it did in construing the terms ‘goods, services, facilities, and information,’ as used in Section 272(c)(1). Similarly, the term ‘software’ should be construed to include all types of software, not merely software that is ‘essential to’ or ‘integral to’ the design and development of telecommunications equipment or CPE.”^{**}

U S WEST agrees with PacTel that Section 273(c)’s nondiscrimination standards should not apply to all equipment – only to ‘equipment, services and software’ directly related to ‘telecommunications equipment and CPE.’^{***} U S WEST also agrees with Ameritech who says that “equipment” refers to telecommunications equipment and CPE, that “software” refers to software which is “integral to the operation of such equipment,” and that “services” refer to services which are integral to the use and operation of telecommunications equipment and CPE such

^{**} SBC at 19. See also Nortel at 14; BellSouth at 25.

^{**} Notice ¶ 63.

^{**} Id. ¶ 63.

^{**} TIA at 51 (footnotes omitted).

^{**} PacTel at 11.

as training about installation and maintenance that a manufacturer customarily provides in connection with supplying telecommunications and CPE.”

On their face, the nondiscrimination standards in Section 273(e)(1) apply only to the procurement or awarding of supply contracts for “telecommunications equipment.” Similarly, the procurement standards in Section 273(e)(2) apply only to a BOC’s procurement of telecommunications equipment and of software and services integral to that equipment. The standards do not apply to BOC procurement of all goods, equipment, services, and software.

Notwithstanding the clear and unambiguous language describing the procurement standards in Section 273(e)(2), TIA recommends that the Commission become deeply involved in all aspects of BOC procurement. TIA recommends rules governing “Bell Operating Company Procurement” including a requirement that each BOC submit a “Manufacturing Compliance Plan” to the Commission “[w]ithin 90 days following the date on which these regulations take effect” which will identify “with specificity the steps [the BOC] has taken and plans to take and the standards and procedures to be employed by the BOC” to comply with all provisions of Section 273, including the procurement standards.²

U S WEST disagrees with TIA’s recommendation regarding BOC procurement for the following reasons: All of the BOCs have developed and implemented rigorous procurement policies and programs which are widely known

² Ameritech at 33-36.

³ TIA, Appendix A, “Text of Proposed Rules Implementing Section 273 of the Telecommunications Act of 1996,” § 53.305 at 7.

throughout the industry. Even before the Act, these policies based BOC procurement decisions on such factors as price, quality, delivery, and other relevant business factors and requirements. Moreover, U S WEST agrees with Nortel: "[T]he Commission is ill-equipped to take on the role of a 'procurement oversight' agency" and "Congress did not intend to impose such a burden on the Commission."²²

The nondiscrimination and procurement standards in Section 273(e) apply only to the procurement of telecommunications equipment by a BOC and only when a BOC is permitted to engage in manufacturing through a separate affiliate. These standards are straightforward and plain. They are designed to ensure that the BOC does not favor its manufacturing affiliate for such procurements. No additional rules are required to implement the standards in Section 273(e).

IV. THE REQUIREMENTS UNDER SECTION 273(d) ARE CLEAR AND NO ADDITIONAL RULES ARE REQUIRED.

A. The Commission Should Not Adopt Rules Which Constrain The Standards-Setting Process.

The Commission should proceed cautiously under Section 273(d) regarding standards setting and certification. U S WEST agrees that Section 273(d) "should be applied as it is written rather than expanded."²³ The standards-setting process is diverse and complex. In its present evolution, it has served the interests of the industry and of consumers well. The Commission should avoid imposing rigid, formal processes on the standards-setting process which now accommodates a wide diversity of interests. The Commission should be cautious about adopting rules in

²² Nortel at 14.

this area which may slow the implementation of technical innovation in the provision of telecommunications equipment, CPE, and network services and which may adversely affect those sectors of the economy.

B. Section 273(d) Describes The Only Conditions Which Must Be Satisfied By Bellcore To Engage In Manufacturing

The requirements of Section 273(d), as they apply to Bellcore after its sale, are plain. When the proposed sale to Science Applications International Corporation ("SAIC") is consummated, Bellcore will not be an affiliate of any BOC, a BOC, a BOC successor or assign, or a common carrier.*

U S WEST agrees with the Commission's tentative conclusion that Bellcore will no longer be considered an affiliate, successor, or assign of a BOC and that it may engage in manufacturing telecommunications equipment and CPE upon consummation of the proposed sale.* Nevertheless, TIA engages in speculation that the terms of any such sale may continue to subject Bellcore to the manufacturing restriction as a BOC affiliate or as a BOC successor or assign.* TIA urges the Commission to adopt a rule which requires Bellcore to "promptly advise the Commission of any development that leads it to conclude that it is no longer subject to the manufacturing restriction." TIA would require Bellcore to submit "appropriate information and documentation supporting such a determination." TIA then recommends that the Commission "initiate a proceeding" to allow other

* BellSouth at 19.

* Bellcore at 7-8.

** Notice ¶ 33.